

IN THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

CENTER FOR BIOLOGICAL)
DIVERSITY,)
)
)
Petitioner,) No. _____)
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY and UNITED)
STATES FISH AND WILDLIFE)
SERVICE,)
)
)
Respondents.)

PETITION FOR REVIEW

Pursuant to Section 509(b)(1) of the Clean Water Act, 33 U.S.C. § 1369(b)(1), Federal Rule of Appellate Procedure 15, and Ninth Circuit Local Rule 15-1, the Center for Biological Diversity (Petitioner) seeks review by this Court of the General Permit for Point Source Discharges from the Application of Pesticides (Pesticide Permit), Docket # EPA-HQ-OW-2020-0005, issued by the United States Environmental Protection Agency (EPA) under the Clean Water Act, 33 U.S.C. § 1251, *et seq.* A copy of the Pesticide Permit is attached hereto as Exhibit A.

The Pesticide Permit authorizes discharges of biological pesticides, and chemical pesticides that leave residue, from point sources into waters of the United

States. Notice of this action was published in the Federal Register at 86 Fed. Reg. 51665 (Sept. 16, 2021). A copy of the Federal Register notice is attached hereto as Exhibit B. The Pesticide Permit will become effective on October 31, 2021. *Id.* In accordance with 40 C.F.R. § 23.2, the Pesticide Permit is considered issued for the purpose of judicial review beginning two weeks after publication in the Federal Register, or on September 30, 2021.

EPA failed to comply with its obligations under the Clean Water Act in issuing the Pesticide Permit. *See* 33 U.S.C. § 1342(a). That challenge is ripe for judicial review by this Court. 33 U.S.C. § 1369(b)(1)(F) (authorizing review by the Court of Appeals for EPA action in “issuing or denying any permit under [33 U.S.C. § 1342]”).

This petition also challenges failures by the EPA and United States Fish and Wildlife Service (FWS) to comply with the requirements of the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, in taking this action. Specifically, EPA and FWS violated the Endangered Species Act by failing to ensure that the issuance of the Pesticide Permit and subsequent uses of the permit will not jeopardize any listed species or destroy or adversely modify critical habitat and by failing to complete required consultation pursuant to Section 7 of the Act prior to finalizing the action, in violations of 16 U.S.C. § 1536 (a)(2). EPA also violated the Endangered Species Act in failing to ensure that it will not “make any irreversible

or irretrievable commitment[s] of resources with respect to the agency action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures,” by initiating, but not completing, Section 7 consultation prior to its issuance of the Pesticide Permit. 16 U.S.C. § 1536 (d). FWS additionally violated the Endangered Species Act because it has unreasonably delayed the completion of Section 7 consultation on the Pesticide Permit until after the permit was issued. *Id.* at § 1536(b)(1)(A) (consultation to be completed within 90 days).

Respectfully submitted this 4th day of October, 2021.

/s/Hannah Connor

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*Counsel for Petitioner Center for Biological
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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the Center for Biological Diversity hereby discloses that it is a non-profit organization existing under the laws of the State of California with no parent corporation and no publicly held corporations owning ten percent or more of any of its stock.

Respectfully submitted this 4th day of October, 2021.

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